

109TH CONGRESS
1ST SESSION

S. 866

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

IN THE SENATE OF THE UNITED STATES

APRIL 21, 2005

Mrs. HUTCHISON introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend title II of the Social Security Act to repeal the windfall elimination provision and protect the retirement of public servants.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Public Servant Retire-
5 ment Protection Act of 2005”.

6 **SEC. 2. REPEAL OF CURRENT WINDFALL ELIMINATION**
7 **PROVISION.**

8 Paragraph (7) of section 215(a) of the Social Secu-
9 rity Act (42 U.S.C. 415(a)(7)) is repealed.

1 **SEC. 3. REPLACEMENT OF THE WINDFALL ELIMINATION**
 2 **PROVISION WITH A FORMULA EQUALIZING**
 3 **BENEFITS FOR CERTAIN INDIVIDUALS WITH**
 4 **NON-COVERED EMPLOYMENT.**

5 (a) SUBSTITUTION OF PROPORTIONAL FORMULA FOR
 6 FORMULA BASED ON COVERED PORTION OF PERIODIC
 7 BENEFIT.—

8 (1) IN GENERAL.—Section 215(a) of the Social
 9 Security Act (as amended by section 2 of this Act)
 10 is amended further by inserting after paragraph (6)
 11 the following new paragraph:

12 “(7)(A) In the case of an individual whose primary
 13 insurance amount would be computed under paragraph
 14 (1) of this subsection, who—

15 “(i) attains age 62 after 1985 (except where he
 16 or she became entitled to a disability insurance ben-
 17 efit before 1986 and remained so entitled in any of
 18 the 12 months immediately preceding his or her at-
 19 tainment of age 62), or

20 “(ii) would attain age 62 after 1985 and be-
 21 comes eligible for a disability insurance benefit after
 22 1985,

23 and who first becomes eligible after 1985 for a monthly
 24 periodic payment (including a payment determined under
 25 subparagraph (E), but excluding (I) a payment under the
 26 Railroad Retirement Act of 1974 or 1937, (II) a payment

1 by a social security system of a foreign country based on
 2 an agreement concluded between the United States and
 3 such foreign country pursuant to section 233, and (III)
 4 a payment based wholly on service as a member of a uni-
 5 formed service (as defined in section 210(m)) which is
 6 based in whole or in part upon his or her earnings for
 7 service which did not constitute ‘employment’ as defined
 8 in section 210 for purposes of this title (hereafter in this
 9 paragraph and in subsection (d)(3) referred to as ‘non-
 10 covered service’), the primary insurance amount of that
 11 individual during his or her concurrent entitlement to such
 12 monthly periodic payment and to old-age or disability in-
 13 surance benefits shall be computed or recomputed under
 14 this paragraph.

15 “(B) The primary insurance amount of an individual
 16 described in subparagraph (A), as computed or recom-
 17 puted under this paragraph, shall be—

18 “(i) in the case of an individual who first per-
 19 forms noncovered service after the 12th calendar
 20 month following the date of the enactment of the
 21 Public Servant Retirement Protection Act of 2005,
 22 the primary insurance amount determined under
 23 subparagraph (C), or

24 “(ii) in the case of an individual who has per-
 25 formed noncovered service during or before the 12th

1 calendar month following the date of the enactment
2 of the Public Servant Retirement Protection Act of
3 2005, the larger of—

4 “(I) the primary insurance amount deter-
5 mined under subparagraph (C), or

6 “(II) the primary insurance amount deter-
7 mined under subparagraph (E).

8 “(C) An individual’s primary insurance amount de-
9 termined under this subparagraph shall be the product de-
10 rived by multiplying—

11 “(i) the individual’s primary insurance amount,
12 as determined under paragraph (1) of this sub-
13 section and subparagraph (D)(i) of this paragraph,
14 by

15 “(ii) a fraction—

16 “(I) the numerator of which is the individ-
17 ual’s average indexed monthly earnings (deter-
18 mined without regard to subparagraph (D)(i)),
19 and

20 “(II) the denominator of which is an
21 amount equal to the individual’s average in-
22 dexed monthly earnings (as determined under
23 subparagraph (D)(i)),

24 rounded, if not a multiple of \$0.10, to the next lower mul-
25 tiple of \$0.10.

1 “(D)(i) For purposes of determining an individual’s
2 primary insurance amount pursuant to subparagraph
3 (C)(i), the individual’s average indexed monthly earnings
4 shall be determined by treating all service performed after
5 1950 on which the individual’s monthly periodic payment
6 referred to in subparagraph (A) is based (other than non-
7 covered service as a member of a uniformed service (as
8 defined in section 210(m))) as ‘employment’ as defined in
9 section 210 for purposes of this title (together with all
10 other service performed by such individual consisting of
11 ‘employment’ as so defined).

12 “(ii) For purposes of determining average indexed
13 monthly earnings as described in clause (i), the Commis-
14 sioner of Social Security shall provide by regulation for
15 a method for determining the amount of wages derived
16 from service performed after 1950 on which the individ-
17 ual’s periodic benefit is based and which is to be treated
18 as ‘employment’ solely for purposes of clause (i). Such
19 method shall provide for reliance on employment records
20 which are provided to the Commissioner and which, as de-
21 termined by the Commissioner, constitute a reasonable
22 basis for treatment of service as ‘employment’ for such
23 purposes, together with such other information received
24 by the Commissioner (including such documentary evi-
25 dence of earnings derived from noncovered service as may

1 be provided to the Commissioner by the individual) as the
 2 Commissioner may consider appropriate as a reasonable
 3 basis for treatment of service as ‘employment’ for such
 4 purposes. The Commissioner shall enter into such ar-
 5 rangements as are necessary and appropriate with the De-
 6 partment of the Treasury, the Department of Labor, other
 7 Federal agencies, and agencies of States and political sub-
 8 divisions thereof so as to secure satisfactory evidence of
 9 earnings for noncovered service described in subparagraph
 10 (A) for purposes of this clause and clauses (iii) and (iv).
 11 The Secretary of the Treasury, the Secretary of Labor,
 12 and the heads of all other Federal agencies are authorized
 13 and directed to cooperate with the Commissioner and, to
 14 the extent permitted by law, to provide such employment
 15 records and other information as the Commissioner may
 16 request for their assistance in the performance of the
 17 Commissioner’s functions under this clause and clauses
 18 (iii) and (iv).

19 “(iii) In any case in which satisfactory evidence of
 20 earnings for noncovered service which was performed by
 21 an individual during any year or portion of a year after
 22 1977 is not otherwise available, the Commissioner may,
 23 for purposes of clause (ii), accept as satisfactory evidence
 24 of such individual’s earnings for such noncovered service
 25 during such year or portion of a year reasonable extrapo-

1 lations from available information with respect to earnings
 2 for noncovered service of such individual for periods imme-
 3 diately preceding and following such year or portion of a
 4 year.

5 “(iv) In any case in which satisfactory evidence of
 6 earnings for noncovered service which was performed by
 7 an individual during any period before 1978 is not other-
 8 wise available, the Commissioner may, for purposes of
 9 clause (ii), accept as satisfactory evidence of such individ-
 10 ual’s earnings for such noncovered service during such pe-
 11 riod —

12 “(I) the individual’s written attestation of such
 13 earnings, if such attestation is corroborated by at
 14 least 1 other individual who is knowledgeable of the
 15 relevant facts, or

16 “(II) available information regarding the aver-
 17 age earnings for noncovered service for the same pe-
 18 riod for individuals in similar positions in the same
 19 profession in the same State or political subdivision
 20 thereof, or, in any case in which such information is
 21 not available for such period, reasonable extrapo-
 22 lations of average earnings for noncovered service
 23 for such individuals from periods immediately pre-
 24 ceding and following such period.

1 “(v) In any case described in subparagraph (B)(i),
 2 if the requirements of clause (ii) of this subparagraph are
 3 not met (after applying clauses (iii) and (iv)), the primary
 4 insurance amount of the individual shall be, notwith-
 5 standing subparagraph (B)(i), the primary insurance
 6 amount computed under subparagraph (E).

7 “(E)(i) For purposes of determining the primary in-
 8 surance amount under this subparagraph—

9 “(I) there shall first be computed an amount
 10 equal to the individual’s primary insurance amount
 11 under paragraph (1) of this subsection, except that
 12 for purposes of such computation the percentage of
 13 the individual’s average indexed monthly earnings
 14 established by subparagraph (A)(i) of paragraph (1)
 15 shall be the percent specified in clause (ii), and

16 “(II) there shall then be computed (without re-
 17 gard to this paragraph) a second amount, which
 18 shall be equal to the individual’s primary insurance
 19 amount under paragraph (1) of this subsection, ex-
 20 cept that such second amount shall be reduced by an
 21 amount equal to one-half of the portion of the
 22 monthly periodic payment which is attributable to
 23 noncovered service performed after 1956 (with such
 24 attribution being based on the proportionate number
 25 of years of such noncovered service) and to which

1 the individual is entitled (or is deemed to be enti-
 2 tled) for the initial month of his or her concurrent
 3 entitlement to such monthly periodic payment and
 4 old-age or disability insurance benefits.

5 An individual's primary insurance amount deter-
 6 mined under this subparagraph shall be the larger of
 7 the two amounts computed under this clause (before
 8 the application of subsection (i)).

9 “(ii) For purposes of clause (i), the percent specified
 10 in this clause is—

11 “(I) 80.0 percent with respect to individuals
 12 who become eligible (as defined in paragraph (3)(B))
 13 for old-age insurance benefits (or became eligible as
 14 so defined for disability insurance benefits before at-
 15 taining age 62) in 1986;

16 “(II) 70.0 percent with respect to individuals
 17 who so become eligible in 1987;

18 “(III) 60.0 percent with respect to individuals
 19 who so become eligible in 1988;

20 “(IV) 50.0 percent with respect to individuals
 21 who so become eligible in 1989; and

22 “(V) 40.0 percent with respect to individuals
 23 who so become eligible in 1990 or thereafter.

24 “(F)(i) Any periodic payment which otherwise meets
 25 the requirements of subparagraph (A), but which is paid

1 on other than a monthly basis, shall be allocated on a basis
 2 equivalent to a monthly payment (as determined by the
 3 Commissioner of Social Security), and such equivalent
 4 monthly payment shall constitute a monthly periodic pay-
 5 ment for purposes of this paragraph.

6 “(ii) In the case of an individual who has elected to
 7 receive a periodic payment that has been reduced so as
 8 to provide a survivor’s benefit to any other individual, the
 9 payment shall be deemed to be increased (for purposes of
 10 any computation under this paragraph or subsection
 11 (d)(3)) by the amount of such reduction.

12 “(iii) For purposes of this paragraph, the term ‘peri-
 13 odic payment’ includes a payment payable in a lump sum
 14 if it is a commutation of, or a substitute for, periodic pay-
 15 ments.

16 “(G)(i) This paragraph shall not apply in the case
 17 of an individual who has 30 years or more of coverage.
 18 In the case of an individual who has more than 20 years
 19 of coverage but less than 30 years of coverage (as so de-
 20 fined), the percent specified in the applicable subdivision
 21 of subparagraph (E)(ii) shall (if such percent is smaller
 22 than the applicable percent specified in the following table)
 23 be deemed to be the applicable percent specified in the
 24 following table:

“If the number of such individual’s years of coverage (as so defined) is: The applicable percent is:

29	85
28	80
27	75
26	70
25	65
24	60
23	55
22	50
21	45

1 “(ii) For purposes of clause (i), the term ‘year of cov-
2 erage’ shall have the meaning provided in paragraph
3 (1)(C)(ii), except that the reference to ‘15 percent’ therein
4 shall be deemed to be a reference to ‘25 percent’.

5 “(H) An individual’s primary insurance amount de-
6 termined under this paragraph shall be deemed to be com-
7 puted under paragraph (1) of this subsection for the pur-
8 pose of applying other provisions of this title.

9 “(I) This paragraph shall not apply in the case of
10 an individual whose eligibility for old-age or disability in-
11 surance benefits is based on an agreement concluded pur-
12 suant to section 233 or an individual who on January 1,
13 1984—

14 “(i) is an employee performing service to which
15 social security coverage is extended on that date
16 solely by reason of the amendments made by section
17 101 of the Social Security Amendments of 1983; or

18 “(ii) is an employee of a nonprofit organization
19 which (on December 31, 1983) did not have in effect
20 a waiver certificate under section 3121(k) of the In-

1 ternal Revenue Code of 1954 and to the employees
 2 of which social security coverage is extended on that
 3 date solely by reason of the amendments made by
 4 section 102 of that Act, unless social security cov-
 5 erage had previously extended to service performed
 6 by such individual as an employee of that organiza-
 7 tion under a waiver certificate which was subse-
 8 quently (prior to December 31, 1983) terminated.”.

9 (2) CONFORMING AMENDMENTS.—

10 (A) Section 215(d)(3) of such Act (42
 11 U.S.C. 415(d)(3)) is amended—

12 (i) by striking “subsection (a)(7)(C)”
 13 each place it appears and inserting “sub-
 14 section (a)(7)(F)”;

15 (ii) by striking “subparagraph (E)”
 16 and inserting “subparagraph (I)”; and

17 (iii) by striking “subparagraph (D)”
 18 and inserting “subparagraph (G)(i)”.

19 (B) Section 215(f)(9)(A) of such Act (42
 20 U.S.C. 415(f)(9)(A)) is amended by striking
 21 “(a)(7)(C)” and inserting “(a)(7)(F)”.

22 **SEC. 4. EFFECTIVE DATE.**

23 The amendments made by this Act shall apply with
 24 respect to monthly insurance benefits for months com-
 25 mencing with or after the 12th calendar month following

1 the date of the enactment of this Act. Notwithstanding
2 section 215(f) of the Social Security Act, the Commis-
3 sioner of Social Security shall recompute primary insur-
4 ance amounts to the extent necessary to carry out the
5 amendments made by this Act.

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